

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 163 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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KALAJI HIRAJI ZALA

Versus

STATE OF GUJARAT

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Appearance:

MS BANNA S DUTTA for Petitioner

MR.D.N.PATEL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.L.DAVE

Date of decision: 23/07/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant has challenged his conviction and sentence for life term for the offence under Section 302 of the Indian Penal Code, under the judgement and order of the learned Additional Sessions Judge, Kheda at Nadiad dated 12.2.1998 in Sessions Case No. 248 of 1997.

As per the prosecution case, on 10th April, 1997, the appellant - original accused had gone to the house of the complainant duly armed with dharia and asked Bhuriben who was the sister of the wife of the appellant, as to why she had hidden his wife. When Bhuriben pleaded ignorance about the whereabouts of the wife of the appellant, he inflicted dharia blows on her, on seeing which her daughter Kokila raised the alarm and Lalubhai, the husband of Bhuriben came there. According to the prosecution, Bhuriben died on the spot as a result of injuries inflicted on her by the appellant.

The record and proceedings had been placed before us and the learned Counsel for the appellant has taken us through all the material evidence which has a bearing on the case.

It is clear from the deposition of prosecution witness Kokila that she was present at the time of the incident, only a few feet away from her mother Bhuriben. This witness was at that time sweeping the veranda when her mother Bhuriben was sweeping the ground. At that time, her father was making tea and both her brothers were sleeping. She has stated that the accused came there and asked her mother Bhuriben about her wife Jabarben. When Bhuriben told him that she did not know the whereabouts of Jabarben, the accused told her that he would cut her to pieces. When Bhuriben continued to plead ignorance about the whereabouts of Jabarben, the accused inflicted two injuries on her neck with the dharia. As a result of this, Bhuriben fell down. This witness raised alarm which attracted prosecution witness Lalubhai and other witnesses, her uncle Dhiraj and aunt Shantaben. The accused threatened this witness and her father and therefore, they escaped from the place of the incident. This witness was about 15 years of age at the time of the incident and was found to be competent to understand the questions. Her presence at the scene of the offence was natural and there is no reason why she should be falsely implicating the appellant, who was the husband of her mother's sister. The witness is not at all shaken in her cross-examination and maintains her version. The evidence of prosecution witness Lalubhai who was deposed at Ex.8 lends credence to the version of this witness. The medical evidence of Dr. Jagrutiben Ex.5 fully supports the prosecution version. The deceased was found with injuries around her neck with a fracture of the spinal cord. As per the medical evidence, the death was caused due to neurogenic shock as a result of the injuries. In our opinion, the evidence

on record clearly establishes the guilt of the appellant - accused. The trial Court was therefore, fully justified in holding the appellant guilty of the offence under Section 302 of the IPC and imposing the sentence of life term with a fine of Rs. 5,000/-. We do not fine any warrant for interference with the impugned decision. The appeal is therefore, summarily dismissed.

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\*/Mohandas